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MONTENEGRO

GENERAL ADMINISTRATIVE LAW FRAMEWORK

ASSESSMENT MAY 2008

Preface

This report updates the administrative framework portion of Sigma's June 2007 assessment report on Public Service and the Administrative Framework in Montenegro.

We use the notion of general administrative law to denote those parts of administrative law that are applicable – fully or partially, primarily or supplementarily – to all administrative settings, public bodies, administrative activities and administrative relationships. In other words, general administrative law would be the part of administrative law that is not only applicable across the whole administration, but also contains principles and norms that give rise to special regulations or specific organisational functioning.

Administrative law is the refined product of the pursuit in the course of history of the liberal goal to submit public powers to the law by ensuring that any action of the state is subject to the law or ruled by law. Modern democratic states derive their administrative law from their constitutions. The study of administrative law in a country cannot be dissociated from that of constitutional law.

The general legal framework for the administration is nevertheless comprised, first and foremost, of administrative law. A first approximation of the definition of administrative law is that it is a part of national public law (in EU Member States it is also now a part of the supranational legal order of the EU) that regulates the powers, competences (responsibilities), organisation and functioning of public authorities or of the public administration as a whole. This regulation includes relations established internally between administrative bodies and externally with other administrative bodies and with the general public.

Civil service legislation forms a part of administrative law, which is the instrument used by civil servants to ensure that the administration operates under the rule of law. Reforming the civil service without reforming the general administrative law would be an incomplete reform. For that reason this assessment attempts to answer the following question:

Do Montenegrin administrative practices and the legal administrative framework guarantee the principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and public officials and to make them accountable for their performance?

The Principle of Legality in the Constitution of 2007

The 2007 Constitution (article 1) establishes that the Republic of Montenegro is ruled by law. Article 16 states that the law regulates the manner of establishment, organisation and competences of the authorities and the procedures before those authorities. Article 20 establishes that everyone has the right to legal remedy against (public) decisions impinging on his rights or interests, a provision which is supplemented by article 57 on the individual and collective right to recourse. However, article 57 contains a rather deterring and intimidating clause, which stipulates that “no one shall be held responsible or suffer harmful consequences because of the views expressed in the recourse, unless having committed a crime in doing so”. Compensation for undue functioning of the administration is not foreseen, as article 38 seems to refer only to compensation

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in the ambit of criminal justice or police actions. Article 51 gives constitutional standing to the right to access public information, with some standard limitations. Article 54 contains an undemocratic provision hardly compatible with EU membership aspirations by stating that “political organising and actions of foreign nationals and political organisations with the seat outside Montenegro shall be prohibited”, a provision which somehow contradicts article 79-12.

The control of the legality of general regulations is not foreseen in the 2007 Constitution, except for the control of constitutionality, an issue which is regulated in a somewhat problematic way in article 150 dealing with the initiation of the procedure to assess constitutionality and legality. For a start, the object of that control is unclear, although it could be understood, according to the last paragraph of that article, that individual and general administrative acts or regulations could be reviewed by the Constitutional Court in the first instance. This arrangement would be inappropriate, as ordinary courts should exercise judicial review over the administration in the first instance, and their rulings should be liable to appeal before higher courts, including the Constitutional Court. On the other hand, the same article 150 allows the Constitutional Court to initiate *motu proprio* the review of legality and constitutionality, which is also inappropriate because, as the Venice Commission rightly points out, it “unduly drags the constitutional court into the political arena” while *de facto* the court becomes a second higher legislative chamber in a parliamentary system that is unicameral, thereby perverting the constitutional set-up.

The 2007 Constitution (art. 148) regulates the principle of legality of individual administrative acts, while stating that individual legal acts shall be in conformity with the law and shall be subject to judicial review. No other provision regarding administrative justice exists in the Constitution. The comparison of articles 148 and 150 raises numerous doubts about the remit of the administrative justice system established by the Constitution, which may lead to numerous conflicts of interpretation that in turn may jeopardise individual citizens’ rights.

According to article 144, the Supreme Audit Institution is to “audit the legality of and success in the management of the state assets and liabilities, budgets and financial affairs of the entities whose source of finance are public or created through the use of state property”.

The 2007 Constitution unfortunately does not establish a hierarchy of legal norms, except for the clear supremacy of international treaties over national law, stated in article 9, and a less clear hierarchy of domestic regulations, hinted at in article 145. It would have been useful for the principle of legality, legal certainty, and transparency of the Montenegrin legal system if the Constitution had established a clear hierarchy of regulations below the rank of the law.

In summary, the Constitution of 2007 has some shortcomings from the standpoint of the protection of the principle of legality in administrative decision-making and operations. If those shortcomings are not dealt with in a conscientious manner, they could lead to undermining the principle of the rule of law, which is proclaimed in article 1 of the Constitution. The interpretation and development of the Constitution should be carried out in accordance with administrative law principles stemming from European treaties and jurisprudence.

Ordinary Legal Administrative Framework for the Administration

The ordinary legal administrative framework for the administration is made up basically of the following pieces of legislation: The Law on State Administration of 26 June 2003 regulates issues of organisation, manner of work and other issues related to the functioning of the state administration (*Official Gazette of the Republic of Montenegro* no. 38/2003). The Law on Inspection Control, also of 26 June 2003, regulates the status, responsibilities and authority of inspections in the performance of control (*Official Gazette* no. 39/2003). The Law on Administrative Disputes of 22 October 2003 regulates judicial control over administrative decisions of state administration authorities (*Official Gazette* no. 60/2003). An Administrative Court was created in 2005. The Law on General Administrative Procedure of 21 October 2003 regulates the relationship between the administration on the one hand and legal and physical entities on the other, and the exercise of their rights and responsibilities in administrative matters (*Official Gazette* no. 60/2003).

The Law on Free Access to Information of Public Importance was passed in November 2005. The protection of personal data is still not regulated by special legislation but is indirectly guaranteed by articles 51 and 70 of the Constitution.

Administrative Procedures

The principal legislation is the Law on General Administrative Procedure of 2003, which is to be applied by state and municipal authorities when issuing decisions impinging upon rights, obligations and legal interests of any natural person or legal entity (article 1). One of the objectives of this law was to reduce the number of special procedures. Such an objective has not yet been attained.

The law is long, complex, excessively detailed and at times inconsistent, as it somehow confuses administrative procedures with judicial review proceedings, as can be inferred, for example, from article 99, an article that deals with keeping public order while an administrative procedure is ongoing. However, this confusion could be rooted in the old Austrian tradition that inspired the former Yugoslavian administrative law.

The principle of giving reasons is not among the general principles of the law set out in chapter I, but article 203-2 imposes the obligation of administrative bodies to motivate their decisions and actions by giving the factual and legal reasons on which their decisions are grounded. However, there are no legal consequences for not complying with this obligation; the lack of motivation of an administrative act is not considered (article 226) as a violation of the fundamental rules of the administrative procedure. Defective law-drafting is leading the Administrative Court to supplement legal loopholes by establishing a firm legal doctrine on motivating administrative acts and nullifying those decisions that do not comply with that obligation.

The Law on General Administrative Procedure takes on board modern computer technologies to ease the work of the administration, particularly in notifying an administrative resolution, which is a positive development. The law makes the personal notification to any interested party compulsory.

The law opts, in articles 37 and 39, for a notion of interested party in the procedure that is perhaps too narrow. Article 39 defines the interested party as a person interested in protecting his rights or legal interest. The notion of legal interest is too narrow because it means that in order to participate in a procedure the person has to show that a law protects his/her interest (“specify the nature of his interest in a petition”). The notion of interested party should be wider as it should include any natural person, legal entity or organisation declaring an interest in the matter, not necessarily a “legal interest” as article 39 requires. This would allow social organisations seeking to protect collective goods or rights (environment, human rights, wildlife, cultural heritage and so forth) to participate as an active party in any legal procedure. This would be more aligned with democratic values and with the tendency in EU Member States to enlarge and reinforce the possibilities of collective action by citizens. The Montenegrin law has opted to go in the opposite direction in order to prevent persons who do not have a legal interest in the procedure from partaking in it.

Fortunately, the Montenegrin court jurisprudence is once more positively contributing to enlarging the legal notion of interested party, as whenever there is a doubt the Administrative Court tends to enlarge rather than restrict the notion of interested party.

An overhaul of the law to make it simpler and clearer would be useful for the users of the law and would help increase the transparency of administrative decision-making. At the same time, the law should be better aligned with European principles of administrative law.

Administrative Inspection

Administrative inspection is regulated by the Law on Inspection Control of 26 June 2003. The Administrative Inspection is responsible for controlling the legality of the administration fundamentally in a preventive manner (article 6). Nevertheless, inspectors can also impose fines (article 17) of up to 30% of the salary of a civil servant and can lodge court proceedings for criminal offences. Their decisions may be appealed before the minister (article 40). Inspectors have their own procedure, which is special with regard to the Law on General Administrative Procedure. They can act *ex officio* or at the request of any citizen. It is envisaged that the Administrative Inspection will co-ordinate all chief inspectorates as well as unify the internal procedures of administrative bodies so as to improve the transparency of the administration for the citizen. There are currently seven administrative inspectors.

Quality of Legislation

There is a Secretariat for Legislation, which reports to the Vice Prime Minister. Its main responsibility is to check the compliance of draft legislation with the Constitution and with the general legal order of the country. The poor quality of legislation is still a problem. The government seems to be aware of this problem and envisages introducing some remedies through external assistance projects.

The quality of legislation is still poor as laws tend to be drafted in isolation and without reviewing the existing legal framework. This practice often leads to overlapping and contradictions and may result in confusing, unclear, redundant and internally inconsistent legislation. Ex ante impact assessment and cost-benefit analyses of the proposed legislation are rarely carried out.

Judicial Review of Administrative Acts

The most recent constitutional changes deal with the judicial system. In addition, a Strategy for the Reform of the Judiciary 2007-2012 has been approved. The Strategy is organised in various chapters, including Building Capacities, Accessibility and Efficiency of the Judiciary, Organised Crime, Terrorism and Corruption, Jurisprudence, Penal System, and New Technologies and the Judiciary.

Legal changes have been made recently, and others are expected: the Judicial Council Law has been adopted (with a new procedure to appoint its members and new competences related to the election of judges); an amendment to the Law on Courts, currently in progress in parliament, creates a new territorial organisation of the judiciary; the Law on Criminal Procedure and the Law on Public Notaries are also in progress; the Law on the Prosecutor has been passed (resolving a conflict of interest that had previously existed, whereby the Prosecutor had a double function – to prosecute criminal activities and to defend state interests in legal matters; the new law provides for new attorneys to represent the state); the Law on State Property has also been approved.

Regarding the new Judicial Council composition, the Venice Commission considers its new organisation and competences to be “*balanced*”. Furthermore, the Commission notes that “*under the new constitution, judges and presidents of the courts are no more elected by the Parliament, but they are appointed by the Judicial Council, whose composition and system of appointment are now suitable for preserving, as stipulated in article 126, the autonomy and independence of the courts and the judges*”. We do not share this opinion for the following reasons: the Judicial Council has 10 members, four elected by judges, five by the government or by the ruling party (Minister of Justice, President of the Supreme Court who is also President of the Judicial Council, one by the ruling party in parliament, two by the President of the Republic from among renowned lawyers), and one by the opposition party in parliament.

This appointment scheme, in which the majority of appointments are based on political party quotas, is most likely to further politicise the Judicial Council. Moreover, the recruitment system of judges is also politicised. Competitions to enter the judiciary are formally open and merit-based, but they have severe limitations. Candidates are required to have a minimum of qualifications (5-15 years of career experience; law degree; bar examination), but there are no criteria to rank candidates or to motivate a proposal. Appointment proposals are made by judicial institutions, and the Council has ample discretion to choose. Therefore there is no guarantee of professional, merit-based appointment of the remaining four Council members appointed by the judiciary. According to the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (Doc. 11205 of 12 March 2007), the appointment of judges depends too much on parliamentary political bargaining. Judicial control of administrative acts had been provided through the judicial review procedure before the Supreme Court. As a consequence of the adoption of the Law on Administrative Dispute of 21 October 2003, the Administrative Court was established on 1 January 2005. The Court inherited 840 unsolved cases from the Supreme Court, which constitutes a considerable backlog, and these are in the process of being cleared, but the backlog is ongoing as the number of new incoming cases is constantly on the rise.

The Administrative Court started with three judges, but in September 2005 it had six judges; in March 2006 a seventh judge was recruited, and so the Court reached full staffing in 2007, with the President of the Court bringing the total to eight judges. In addition, the Court has four legal clerks who assist the judges in preparing the judgements. To shorten the time lapse between appeal and judgement, which currently averages one year, the Court has prepared a new systematisation. Given the backlog and the amount of newly arriving cases, the staff resources of the Court would need to be increased. As the Court – as well as most of the legislation on which it rules – is new, the judges still need training.

The Administrative Court has full jurisdiction. It is the first and final instance in most cases. There are some cases for which an extraordinary legal remedy before the Supreme Court is possible, either on matters of procedure or substance. The Court has also competence in electoral disputes.

Approximately 1800 cases were submitted to the Administrative Court in 2007, which represents an increase of 25% compared to 2005. There are currently 1400 unresolved cases pending from previous years, and this number is not expected to diminish since each judge already deals with an average of 250 cases per year. The Supreme Court has annulled only a few rulings of the Administrative Court since the latter was established. Approximately 10% (420 cases) of the sentences of the Administrative Court were revised by the Supreme Court in 2005-2007 (4250 sentences); 60 sentences were quashed (1.4% of the total number of cases).

All administrative acts can be revised by the Court, including those of the central state administration and municipalities. However, the “acts of government” cannot be revised by the Court (article 220 of the Law on General Administrative Procedure). This overall exclusion of “acts of government” from the purview of the Court departs from the standard of many EU countries, where “acts of government” are increasingly becoming public decisions subject to judicial review; although that exclusion was the general rule in those countries some 50 years ago, government decisions nowadays are subjected more and more to judicial review. This review is understood as a necessary requirement in a state ruled by law, in which discretionary decisions should also be subject to judicial control.

It is reported that the administration in general complies readily with the Administrative Court’s decisions. Approximately 60% of the Court’s rulings annulled administrative decisions in 2005. In 2006 this proportion was reduced to 50% and in 2007 to 37%. This reduction could mean either that administrative bodies are increasingly compliant with the principle of legality or that the Administrative Court is less demanding with regard to the way in which administrative bodies take decisions. Most of the cases concern customs, taxation, cadastre, property restitution issues, and free access to information, and some 50% of the cases refer to local self-governments (licensing and authorisations).

However, even if the Administrative Court judges, according to its President, do not feel constrained in their independence, the independence of judges in general is not guaranteed, according to the Committee of Legal Affairs and Human Rights of the Council of Europe (see above).

Access to Public Information¹

The Law on Free Access to Information was adopted and came into effect in November 2005. The law gives any natural or legal person the right to access information held in any form by state and local authorities, public companies and other entities exercising public powers. Requests must be in writing, including via email. Bodies must make their decisions within eight days; this period can be extended another 15 days. In case of emergency, responses must be provided within 48 hours. There are exemptions for national security, defense or international relations; public security, commercial or other private or public economic benefits; economic monetary or foreign exchange policy; prevention and investigation of criminal matters; personal privacy and other personal rights; and internal negotiations.

The interested party must be “significantly harmed” and the harm must be “considerably greater than the public interest in publishing such information”. Information cannot be withheld if it relates to ignoring regulations, unauthorised use of public resources, misuse of power, criminal offenses and other related maladministration issues. Appeals for denials are to be made to the supervisory body of the agency. Appeals can then be made to a court.

Government bodies are also required to create and publish lists of types of information held, including public registers and records. The media ministry must publish a guide. There are sanctions for agencies and officials refusing access to information.

The law also includes a limited whistle-blower protection provision that limits sanctions on public employees who publicly reveal misuse or irregularities and who also inform the head of the agency or relevant investigatory agency.

There is no law on official secrets defining the nature of those secrets, which in practice means that everything may be marked as state secret. However, even if not precisely defined, the notion of official secret is mentioned in article 51 of the Civil Service Law. This provision strongly emphasizes the public employees’ obligation of confidentiality and secrecy for five years or more after leaving office. To disclose

¹ This section is partly drawn from <http://www.freedominfo.org/countries/montenegro.htm>.

“official secrets” before a court, a civil servant needs to have the authorisation of his/her superior. Also, article 143 of the Law on General Administrative Procedure refers to state secrets as justifying a hearing behind closed doors rather than before the public.

The Agency for National Security has issued a decree on the classification of state secrets, but it is reported to have refused to release it. The Criminal Code prohibits the disclosure of official secrets and military secrets. The Law on the Agency for National Security allows individuals to request their files but to date no files has been requested.

These regulations, especially the regulations contained in article 51 of the Civil Service Law and in the Criminal Code, foster a culture of secrecy, opaqueness and confidentiality which is inimical to the idea of transparency and free access to information. It is no surprise that public authorities tend to arbitrarily deny access to their documents and to obstruct that access as much as they can and that this matter concerns a considerable number of cases brought before the Administrative Court².

The Ministry of Culture and Media is in charge of implementation of these regulations and has conducted some training of officials, but the perception of NGOs is that there is little political will to implement the law. The Network for the Affirmation of the NGO Sector ([MANS](#)) has filed several hundred requests and reported that agencies had responded on time in around 50% of the cases.

The [US State Department](#) has indicated that “the constitution and law provide for public access to information. In practice access to public information was mixed. Some ministries were reluctant to implement the law fully and publicly criticized requests for information, but others were supportive. Authorities usually gave reasons for denials and denials could be appealed to the courts. While the courts usually supported access to the information, their orders to the ministries were often ambiguous and consequently ignored. Citizens could inspect secret files kept on them by the former State Security Service (SDB), the precursor of the NSA, from 1945 to 1989; since 2001, 327 requests were made for inspection of SDB files, of which 90 were approved. In approximately half of the other cases, authorities responded that no file had been created. Nine requests were filed with the current NSA in 2006; two were approved and seven rejected (in three cases the stated reason for denial was that no such file existed; no reason was given in four cases)”³.

Human Rights and Freedoms Ombudsman

The Protector of Human Rights and Freedoms (article 81 of the 2007 Constitution) – Ombudsman – has a constitutional standing and is an independent institution entrusted with protecting and promoting human rights and freedoms when these have been violated by means of an enactment, act or failure to act on the part of state authorities, local self-government authorities, public services and other holders of public powers. In addition to this function, the mission of the Ombudsman includes awareness-raising regarding the importance of the rule of law and consistent protection of human rights and freedoms and, in general terms, bringing about legal certainty, lawful and impartial work of the state authorities before which citizens exercise their rights, freedoms, duties and legal interests.

The institution of the Human Rights and Freedoms Ombudsman was established by [law](#) on 10 July 2003 and the first Ombudsman was elected in October 2003. The Ombudsman’s term is for six years; he/she may be re-elected. The Constitution is silent as to whether the Ombudsman reports to parliament. The Ombudsman should perform his/her duties on the basis of the Constitution and laws and adhere to the principles of justice and fairness in the course of his/her work.

A total of 18 staff are employed in the institution, which includes two deputies, five advisers organised in five areas of activity: Judiciary, Children Rights, State Administration, Minority/Gender/Religious Aspects, and Police /Prosecutor’s Office. The Ombudsman institution may act on its own motion or upon request. It may look into the judiciary, but only under specific, limited circumstances (i.e. if the trial is not held within a reasonable time, if a judicial ruling is not properly executed, or if there appears to be an abuse of procedures).

In 2007 the Ombudsman received 647 complaints: 143 were closed on the basis of the absence of competence; 244 are still in progress; 260 have been completed. About 33% are related to the public administration. The Ombudsman Report of 2006 comprised 31 recommendations (seven to the state

² See Calovic, Vanja and Milena Deletic (November 2006), “Right to Know”, MANS, Podgorica, and the case study by the same authors, “Behind the Closed Door: Free Access to Privatisation Information”, MANS, Podgorica, 2006.

³ At <http://www.state.gov/g/drl/rls/hrrpt/2006/81373.htm>.

administration). That report (page 26, 5,1,3) highlights the issue of the right to fair and impartial decisions in legal procedures before the authorities: Many citizens complained to the Protector about the violation of rights in administrative procedure, such as exceeding deadlines set by law and the “silence of the administration”. The right to a fair and impartial decision was thereby violated in legal procedures before the authorities, and the citizens were deprived of the right to protect freedoms and rights in legal procedures and of the right to protection before the court. For most of the complaints pertaining to the violation of this right, the irregularities were eliminated after the intervention of the Protector or following the complainants’ requests.

However, the Protector noted that in some cases a citizen was not able to protect his/her rights in an administrative procedure, and there was no subsequent court protection, even though the administrative procedure had been unduly delayed and in some cases had lasted for several years (although the Law on Administrative Procedure clearly defined the relevant deadlines); this way of legal redress thus lost any sense. Nothing this, the Protector indicated that the purpose of adopting this law in 2003 had been primarily to introduce better efficiency in the administration and in the process of decision-making with regard to the rights and obligations of citizens and other parties in the procedure, as well as to improve the level of protection of the rights and legal interests of parties in the procedure and to improve the efficiency of administering the administrative procedure, particularly through the use of modern IT tools. The Protector noted that there were cases in which the authorities had delayed the procedure on purpose when deciding on citizens’ requests in order to prevent the parties from asserting their rights before the courts or to stop them from resorting to appropriate legal remedies. Upon finding a violation of human rights or freedoms, the Ombudsman may initiate disciplinary procedures or dismissal of the violator. Failure to comply with the Ombudsman's request for access to official data, documents, or premises, or with the Ombudsman's request to testify at a hearing, is punishable by fines of 10 to 20 times the minimum monthly wage. In general the government and the courts implement the Ombudsman's recommendations⁴. However, this opinion on the Ombudsman is not shared widely, as there are critics who think that the Ombudsman is rather a partisan of the currently ruling party. The World Bank proposes enhancing the budgetary independence of the Ombudsman by giving to a parliamentary committee the responsibility for determining the Ombudsman’s budget allocation⁵.

The Venice Commission recommended safeguards to reduce the partisan politicisation of the Ombudsman, which were not completely followed: “Regrettably, of all suggestions made by the Venice Commission with a view to reinforcing the independence of this important institution (Interim opinion, § 103), only, and only in part, the one on the mandate has been followed. Article 91 now provides that the ombudsman is elected by parliament with the majority vote of the total number of MPs: a qualified majority should have been provided instead”⁶.

Administrative Organisation

The main piece of legislation dealing with the organisation of the central administration is the Law on State Administration of 26 June 2003. It establishes the criteria and principles upon which administrative activity is to be based. This law determines the competences of the state administration (article 11 and ff.) and establishes the principle that these competences have to be carried out by civil servants (article 47). The state administration authorities are the government, ministries and other administrative authorities or agencies. The law sets certain management requirements and liabilities for the state administration (articles 41 and ff.) and regulates certain rights of citizens to access data, documents and information of state administration authorities. It also provides instructions on how to deal with citizens’ complaints (article 51 and ff. and 95-98) and to resolve conflict of competences among state authorities (articles 99-100) and ways and means of co-operation and co-ordination among these authorities. Many provisions of this law overlap provisions already contained in other laws, which places legal certainty at risk.

Changes to this law are expected due to new constitutional requirements on the delegation and entrustment of duties, and article 112 requires that the delegation of competences to local self-government or to other legal persons be made through statutory law.

⁴ At <http://www.state.gov/g/drl/rls/hrrpt/2006/81373.htm>.

⁵ World Bank (2006), Report No. 36533: *Republic of Montenegro: Public Expenditure and Institutional Review*, volume I, released on 3 November 2006, page 50.

⁶ Venice Commission (2007), Opinion No. 392/2006: CDL-AD(2007)047 of 20 December 2007 (www.venice.coe.int).

Territorial Organisation

The territorial organisation of the state is based on municipalities (article 114 of the 2007 Constitution). Article 117 of the Constitution guarantees local autonomy. Article 115 states that the authorities of the municipality shall consist of the council and the mayor of the municipality. However, according to the Council of Europe's Parliamentary Assembly Commission following up Montenegrin commitments (Doc. 11207 of 28 March 2007), "the existing legislation on local autonomy is not aligned with the European Charter of Local Autonomy"; Montenegro has not yet ratified this charter.

Montenegro has 21 municipalities; the municipality of Podgorica has the statute of administrative capital city and the municipality of Cetinje that of historical or "royal" capital. All municipalities are organised according to the same principles and organs, with a council and mayor, have the same competences in terms of local public services and are under the tutelage and control of the state government, which may dissolve the municipal assembly and discharge the mayor from duty if they fail to perform their duties for a period of more than six months. The municipalities are syndicated in the Montenegrin Municipal Union⁷.

Recommendations

1. The Law on General Administrative Procedure needs to be reviewed, simplified and adapted to general European standards. This exercise should be coupled with the review of special administrative procedures and either their abrogation or reduction to an absolute minimum number.
2. Administrative openness and transparency should be improved by facilitating access to public information. Transparency should be the rule, and confidentiality and secrecy the exceptions.
3. Strengthening the Secretariat for Legislation would help foster the production of better quality legislation, especially administrative legislation, with a view to preventing legal uncertainty.
4. Municipal autonomy should be aligned with European standards.
5. The independence of the judiciary, including administrative justice, should be protected beyond any reasonable doubt if the public administration is to be effectively governed by the rule of law. Consequently, the strengthening of the administrative justice system should be sustained.
6. The development and interpretation of the new Constitution should, to the extent possible, be made in accordance with the general principles of administrative law stemming from European international treaties and jurisprudence, in order to limit the negative effects that the Constitution's shortcomings could have on Montenegrin citizens and residents.

⁷ There is a draft Law on Territorial Organisation supported by the Council of Europe, but no information or copies were available (<http://www.coe.cg.yu/eng/news/council-of-europe/draft-law-on-territorial-organization.html>).